

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-142073-13

Date:
February 26, 2014

Legend:

Decedent	=
Date 1	=
X	=

Dear :

This letter responds to your authorized representative's letter of September 23, 2013, and subsequent correspondence, requesting a ruling under § 2642(g)(1) that the personal representative substantially complied with the requirements of § 2632(a) to allocate Decedent's remaining generation-skipping transfer (GST) exemption at death to three pecuniary bequests to skip persons and the GST Trust, a testamentary trust established under Decedent's Will.

The facts submitted and the representations made are as follows. Decedent died on Date 1. In the First Codicil to Decedent's Will she made three pecuniary bequests of \$X each to three skip persons.

Article Fourth, Section A of Decedent's Will provides that the residue of Decedent's estate is to be held in two trusts (the GST Trust and the Non-GST Trust) for the benefit of her son and his surviving issue. This paragraph further provides:

My Trustee shall allocate to the GST Trust, a fraction of my
Residuary Estate:

- (i) The numerator of which shall be that part of the amount, if any, of the "GST Exemption" (as hereinafter defined in this Article Fourth, Paragraph A) available to my Estate at my death under Section 2631, Internal Revenue Code of 1986, as from time to time amended and actually allocated to this Trust (herein, "Code Section 2631"); and

- (ii) The denominator of which shall be an amount equal to the amount of my Residuary Estate, as finally determined for Federal Estate Tax purposes.

My Trustee shall allocate the balance of my Residuary Estate to the Non-GST Trust. As used in this Will, the "GST Exemption" means the exemption from Generation-Skipping Tax allowed under Code Section 2631.

Decedent's personal representative retained an accountant to prepare the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The personal representative timely filed the estate's Form 706, attached to which was a copy of Decedent's Will. On the Schedule R attached to the Form 706, the accountant made a mathematical error when allocating GST exemption to the three direct skips of \$X each. In addition, the accountant failed to enter any trust on Part 1, Line 9.

Law and Analysis:

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(c)(1) provides that the term "direct skip" means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that the term "skip person" means a natural person assigned to a generation that is two or more generations below the generation assignment of the transferor, or a trust if all interests in the trust are held by skip persons.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual has GST exemption amount which the individual (or his executor) can allocate to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, is irrevocable.

Section 2631(c) provides that for purposes of § 2631(a), the GST exemption amount for any calendar year is equal to the basic exclusion amount under § 2010(c) for such calendar year.

Section 2632(a) provides that any allocation by an individual of his GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for the individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) is deemed to be allocated (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 2632(e)(2)(A) provides that the allocation under § 2632(e)(1) is made among the properties described in § 2632(e)(1)(A) and the trusts described in § 2632(e)(1)(B) in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

Section 26.2632-1(a) of the Generation-Skipping Transfer Tax Regulations provides that an individual or the individual's executor may allocate the individual's GST exemption at any time from the date of the transfer through the date for filing the individual's Federal estate tax return (including any extensions for filing that have been actually granted). If no estate tax return is required to be filed, the GST exemption may be allocated at any time through the date a Federal estate tax return would be due if a return were required to be filed (including any extensions actually granted).

Section 26.2632-1(d)(1) provides that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706 or Form 706NA) filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted (the due date)). An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death.

Section 2642(g)(2) provides that an allocation of GST exemption under § 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances are to be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

The instructions for the Schedule R (Form 706) the personal representative filed state that in order to avoid the application of the deemed allocation rules, Form 706 and Schedule R should be filed to allocate GST exemption to trusts that may later have taxable terminations or distributions under § 2612, even if the form is not required to be filed to report estate or GST tax.

The instructions for Part 1, Line 9 of the Schedule R (Form 706) the personal representative filed state:

Line 9 is used to allocate the remaining unused GST exemption (from line 8) and to help you compute the trust's inclusion ratio. Line 9 is a Notice of Allocation for allocating the GST exemption to trusts as to which the decedent is the transferor and from which a generation-skipping transfer could occur after the decedent's death.

If line 9 is not completed, the deemed allocation at death rules will apply to allocate the decedent's remaining unused GST exemption, first to property that is the subject of a direct skip occurring at the decedent's death, and then to trusts as to which the decedent is the transferor. If you wish to avoid the application of the deemed allocation rules, you should enter on line 9 every trust . . . to which you wish to allocate any part of the decedent's GST exemption. Unless you enter a trust on line 9, the unused GST exemption will be allocated to it under the deemed allocation rules.

In this case, with respect to the bequests to the skip persons, there is sufficient evidence that the personal representative intended to allocate enough GST exemption to these bequests so that these bequests would have an inclusion ratio of zero. Accordingly, based upon the facts submitted and the representations made, we conclude that the estate substantially complied under section 2642(g)(2) with the allocation of GST exemption to these bequests such that these bequests have zero inclusion ratios.

With respect to the GST Trust, the personal representative did not comply with the instructions on Form 706. The accountant did not enter the GST Trust on Part 1, Line 9 of the Schedule R filed with the Form 706. However, literal compliance with the procedural instructions to make an election is not always required. See Hewlett-Packard Company v. Commissioner, 67 T.C. 736 (1977), acq. in result, 1979-1 C.B. 1. Thus, an allocation that does not strictly comply with the instructions on Form 706, or the applicable regulations, will be deemed valid if the information on the return is sufficient to indicate that the personal representative intended to make an allocation of GST exemption. Based upon the facts submitted and the representations made, we conclude that the Form 706 contains sufficient information to constitute substantial compliance under § 2642(g)(1) with the requirements of § 2632(a) to allocate Decedent's remaining GST exemption at death to the GST Trust.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

James F. Hogan

James F. Hogan
Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes